



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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Finding of No Significant Impact Bureau of Land Management Rock Springs Field Office

2016 Removal of Wild Horses from Checkerboard within the Great Divide Basin, Salt Wells Creek and Adobe Town Herd Management Areas

DOI-BLM-WY-D040-2016-0135-EA

BACKGROUND

On October 4, 2010, the Rock Springs Grazing Association (RSGA) submitted a written request to the Bureau of Land Management (BLM) to remove all wild horses that had strayed onto its private lands. The RSGA owns and leases approximately 1.4 million acres of land (including 48 percent of the private land in the four herd management areas) on alternating odd-numbered sections in the checkerboard pattern of mixed land ownership in southern Wyoming (hereafter referred to as "Checkerboard"). After the BLM did not take action on the request to RSGA's satisfaction, RSGA filed a complaint in the U.S. District Court for the District of Wyoming (*Rock Springs Grazing Association v. Salazar*, No. 11- CV-00263-NDF). The BLM and RSGA resolved the litigation by entering into a settlement agreement that was memorialized in a consent decree (2013 Consent Decree). On April 3, 2013, the District Court approved the 2013 Consent Decree and Joint Stipulation for Dismissal and dismissed the case, finding the decree to be a "fair, reasonable, equitable and adequate settlement of RSGA's claims against the BLM, and which does not on its face violate the law or public policy."

The April 3, 2013 Consent Decree provides in part:

Paragraph 1: "Pursuant to 16 U.S.C. §1334, BLM agrees to remove all wild horses located on RSGA's private lands, including Wyoming Checkerboard lands, with the exception of those wild horses found within the White Mountain Herd Management Area (HMA), in accordance with the schedule set forth in paragraph 5."

Paragraph 4: "...If BLM determines, based on the results of any census and on projected reproduction rates, that the population in the Checkerboard lands is likely to exceed 200 wild horses for Salt Wells/Adobe Town Areas combined or 100 wild horses for Divide Basin, the BLM shall prepare to remove the wild horses from Checkerboard lands within the respective area. ..."

Paragraph 5: “BLM will commit to gather and remove wild horses from Checkerboard lands within Salt Wells and Adobe Town HMAs in 2013, Divide Basin HMA in 2014, and White Mountain HMA in 2015, with the exception of those wild horses that are allowed to remain as identified in paragraphs 1 and 4. BLM will also commit to an additional gather and removal in the above areas in 2016, if necessary to achieve the numbers identified in paragraphs 1 and 4.

On March 22, 2016, the Bureau of Land Management (BLM) Rock Springs Field Office (RSFO) issued a scoping statement for the Proposed Action. RSFO’s 2015 census data estimated that the wild horse populations within the Checkerboard lands would exceed the number of wild horses permitted within the Checkerboard as outlined in the 2013 Consent Decree.

In April 2016, the BLM conducted a wild horse census for the Great Divide Basin, Salt Wells Creek and Adobe Town HMAs. This census was conducted in accordance with the United States Geological Survey (USGS) simultaneous double count method. The 2016 wild horse census indicated that the trigger populations outlined in the 2013 Consent Decree had been reached, thereby leading to the proposed removal of all wild horses from Checkerboard lands.

On August 11, 2016, the RSFO launched a 30-day public comment period for Environmental Assessment 2016 Removal of Wild Horses from Checkerboard within the Great Divide Basin, Salt Wells Creek and Adobe Town Herd Management Areas DOI-BLM-WY-D040-2016-0135-EA.

Removal of wild horses from private lands is necessary under Section 4 of the Wild Free-Roaming Horses and Burros Act (WHA), its implementing regulation at 43 CFR 4720.2-1, and the 2013 Consent Decree. This census confirmed that there are more wild horses on the Checkerboard lands than RSGA agreed to allow to remain there in the 2013 Consent Decree, and therefore BLM would need to gather and remove wild horses in the Checkerboard to fulfill its commitments in the Consent Decree and obligations under Section 4 of the WHA. See Section 1.1 Background Information in the DOI-BLM-WY-D040-2016-0135-EA for additional historical background information.

PLAN CONFORMANCE AND CONSISTENCY

The Proposed Action is in conformance with the land use plan terms and conditions as required by 43 CFR 1610.5-3(a). Any action in the Rock Springs or Rawlins Field Offices is subject to requirements established by the Green River Resource Management Plan (RMP) (1997) and the Rawlins Resource Management Plan (2008), respectively; as amended.

FINDING OF NO SIGNIFICANT IMPACT DETERMINATION

Based upon the information contained in the attached environmental assessment, *2016 Removal of Wild Horses from Checkerboard within the Great Divide Basin, Salt Wells Creek and Adobe Town Herd Management Areas DOI-BLM-WY-D040-2016-0135-EA*, and all other information available to me, it is my determination that: (1) the implementation of Alternative 2 (Proposed Action) will not have significant environmental impacts beyond those already addressed in the Green River and Rawlins RMPs; (2) the Proposed Action is in conformance with the RMPs, as amended; and (3) the Proposed Action does not constitute a major federal action having a significant effect on the human environment. Therefore, an environmental impact statement is not necessary and will not be prepared.

This finding is based on my consideration of the Council on Environmental Quality (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and to the intensity of the impacts described in the EA or as articulated in the letters of comment.

Context

The impacts of the Proposed Action are limited to a localized geographic area. The proposed removal consists of three herd management areas: Salt Wells Creek, Adobe Town and Great Divide Basin HMAs. The Salt Wells Creek HMA, managed by the RSFO, is approximately 1,172,237 acres of which 691,283 acres are public and 480,954 acres are private. The Great Divide Basin HMA, managed by the RSFO, is approximately 777,164 acres of which 561,098 acres are public and 216,066 acres are private. The Adobe Town HMA, managed by both the Rawlins Field Office and the RSFO, is approximately 469,473 acres of which 443,136 acres are public and 34,683 acres are private. The majority of the private land holdings within these HMAs are within the Checkerboard land pattern and are controlled by the RSGA.

When considered in context, the effects of the Proposed Action are not significant because, as explained in the EA, the effects of the removal are limited to these three HMAs and most expected impacts would be avoided and/or minimized through the Standard Operating Procedures for gathers (Appendix II) and the design features of the Proposed Action (See Sections 2.2 and Sections 3.1 through 3.8 of the EA).

Intensity

I have considered the potential intensity of the impacts anticipated from the Proposed Action, based on the ten intensity factors set forth in 40 CFR 1508.27(b). My conclusions with respect to each factor are summarized briefly below:

1. Impacts that may be both beneficial and adverse.

There are both beneficial and adverse impacts that are likely to result from the Proposed Action. As described in the EA, potential adverse impacts from the implementation of the Proposed Action include: handling stress and injury to wild horses from the gather operations; temporary displacement of wildlife near trap sites; trampling of some vegetation and soil compaction at the trap sites; and temporary closure of habitat areas near trap sites or temporary holding facilities. However, none of these impacts would be significant at the local scale or cumulatively because of the relative scale and short duration of the project, design features of the Proposed Action, and Standard Operating Procedures outlined in Appendix II of the EA.

Potential beneficial impacts from the implementation of the Proposed Action include removal of wild horses from private land as provided for in Section 4 of the WHA and improvements in the quality and quantity of forage in areas where stray wild horses are removed. Since wildlife, livestock, and wild horses have similar dietary overlap (grasses and forbs) the removal of stray wild horses would reduce the direct competition of forage and circumvent over-utilization of forage and further reduction in vegetative ground cover. The quantity of forage throughout the HMAs could be increased. Vegetation composition, cover, and vigor could improve or be maintained near water sources where wild horses tend to congregate. Vegetative diversity and health should improve in areas where stray wild horses are removed.

The Proposed Action is anticipated to have no effect on the health and viability of the wild horses and herd populations that are left in the solid block public lands portion of the HMAs. As explained in Section 3.2 of the EA, BLM estimates that the number of wild horses remaining would be sufficient to maintain the genetic diversity and viability of the herd.

Wild horse populations grow at a rate of about 20% per year and historically, when wild horses have been gathered from this area, populations have rebounded quickly. This was demonstrated during the census counts that occurred after the 2014 removal of all wild horses within Checkerboard lands. Both the 2015 and 2016 census counts indicate that the wild horse population within the Checkerboard is already exceeding the threshold population allowances identified in the 2013 Consent Decree (greater than 200 in Adobe Town/Salt Wells HMA Complex and greater than 100 in the Great Divide Basin HMA). The 2015 and 2016 census counts also demonstrate that the wild horse population throughout the HMAs is above the low end of the appropriate management level range. The BLM suspects that, in addition to population growth, the seasonal movements of wild horses helped facilitate the population recovery demonstrated by these census counts. These seasonal movements and the associated population recovery are also anticipated to occur following implementation of the Proposed Action.

2. The degree to which the proposed action affects public health and safety.

The Standard Operating Procedures (Appendix II of the EA) would be used to conduct the gather and are designed to protect human health and safety, as well as the health and safety of the wild horses. The Proposed Action would have no effect on public health and safety.

3. Unique characteristics of the geographic area such as proximity of historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

As described in Section 3.5 of the EA, the Proposed Action is not expected to affect historic or cultural resources or properties of concern to Native Americans. Temporary trap sites will be selected with the approval of a cultural resource specialist and wildlife biologist for appropriate locations away from any sensitive resources.

Table 4 of the EA demonstrates that there are no anticipated impacts to ecologically critical areas or wetlands. No park lands, prime farmlands or wild and scenic rivers are present in the area of the Proposed Action.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

The effects of the implementation of the Proposed Action are presented in the EA document. Department of the Interior NEPA regulations define “controversial” as referring to circumstances where a substantial dispute exists as to the environmental consequences of the Proposed Action and does not refer to the existence of the opposition to a proposed action, the effect of which is undisputed. 43 CFR 46.30. *See also Missouri Coalition for the Environment*, 172 IBLA 226, 249 n.23 (2007) (“Whether a proposed action is ‘likely to be highly controversial’ under 40 CFR 1508.27(b)(4) is not a question about the extent of public opposition, but, rather, about whether a substantial dispute exists as to its size, nature, or effect.”). The BLM has analyzed and conducted numerous wild horse gathers and removals in the Checkerboard HMAs since enactment of the WHA. The effects of such gathers are well understood.

BLM conducted a similar removal in 2014 and the analysis of the EA predicts that effects will be similar to past operations, and that wild horse populations would rebound and continue to remain at genetically viable self-sustaining populations. The BLM has no scientific evidence supporting claims that the project will have controversial effects within the meaning of this factor.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

Possible effects on the human environment are not highly uncertain and do not involve unique or unknown risks. The analysis for the Proposed Action does not show that this action would involve any unique or unknown risks.

The BLM RSFO and RFO have reviewed the National Academy of Science (NAS) report, "Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward" and have determined that its recommendations do not suggest that the removal of wild horses from private lands, as proposed under the Proposed Action, presents any unique or unknown risks, highly controversial effects, or would otherwise meet any other intensity factor of 40 CFR 1508.27(b).

The BLM has been conducting wild horse gathers since the mid-1970s. During this time, methods and procedures have been identified and refined to minimize stress and effects to wild horses during gather implementation. The Standard Operating Procedures in Appendix II of the EA would be implemented to ensure a safe and humane gather occurs and would minimize potential stress and injury to wild horses. The BLM has analyzed and conducted numerous wild horse gather and removals in the Checkerboard HMAs since enactment of the WHA. The effects of such gathers are well understood.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The removal is being conducted in accordance with the 2013 Consent Decree, in which BLM committed to removing all wild horses from Checkerboard lands when BLM determines that the numbers of wild horses within the Checkerboard portions of the HMAs exceed the numbers set forth in the Consent Decree. BLM entered into the 2013 Consent Decree to fulfill its obligations under Section 4 of the Wild Horses Act to remove horses from private lands at the request of the land owner, RSGA.

BLM has previously gathered wild horses in these three HMAs under the 2013 Consent Decree. It is possible that BLM may conduct similar gathers in the future. Nevertheless, BLM's analysis and conclusions in the FONSI and EA are limited to the Proposed Action at issue here. Thus, this action does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. Future actions would be subject to separate evaluation through the appropriate level of NEPA analysis.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

Cumulative effects were analyzed in Section 3.8 of the EA. No project specific or cumulative impacts associated with the Proposed Action have been identified that could not be avoided through the project's design or avoidance measures. The impacts identified do not exceed the level of impacts outlined in the Rawlins and Green River RMPs, as amended.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.

Potential impacts to cultural and historic resources are described in Section 3.5 of the EA. Direct or indirect impacts to cultural and historic resources are not anticipated to occur from implementation of the Proposed Action. Surface disturbing activities at the trap locations would be minimal and no historic properties would be adversely affected due to avoidance and identification of conflicts. The RSFO or RFO archeologists would review all proposed temporary holding facility locations to determine if these have had a Class III intensive cultural resources field inventory, and/or if a new inventory is required. If cultural resources are encountered at proposed gather sites or temporary holding facilities, those locations would not be utilized unless they could be modified to avoid or mitigate adverse impacts to significant cultural resource site(s).

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

Threatened and Endangered Species are discussed in Section 3.3 of the EA. The Proposed Action is not likely to adversely affect any listed species. Additionally, trap sites will be constructed and operated under the recommendations of a wildlife biologist to avoid adverse impacts to wildlife, including known sage-grouse leks, nesting and winter concentration areas, active raptor nests, White-tail Prairie Dog towns, Pygmy Rabbit habitat, Mountain Plover nesting habitat and big game crucial winter ranges and parturition areas.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The removal of wild horses from the checkerboard lands within these three HMAs does not threaten to violate any federal, state, local, or tribal law or requirement imposed for the protection of the environment.

This removal is in compliance with the WHA, as amended by the Federal Land Policy and Management Act of 1976 (FLPMA); the Public Rangelands Improvement Act of 1978; and the two governing land use plans: the 1997 Green River and 2008 Rawlins Resource Management Plans (RMPs), respectively; as amended.

The Proposed Action is in compliance with Section 4 of the WHA, 16 U.S.C. §1334, its implementing regulations at 43 CFR 4720.2, and the 2013 Consent Decree. Through this gather, the BLM is not removing excess wild horses from the public lands under Section 3 of the WHA, 16 U.S.C. §1333.

the Green River and Rawlins RMPs, including that related to appropriate management levels (AMLs), do not apply to private lands.

Finally, the Proposed Action is consistent with order of the U.S. District Court in *American Wild Horse Preservation Campaign v. Jewell*, 14-CV-152-NDF (D. Wyo. March 3, 2015), which affirmed BLM's authority under Section 4 of the WHA to remove wild horses from Checkerboard lands.

Authorized Officials:



Kimberlee D Foster
Rock Springs Field Manager

Date: 9/16/16



for Dennis J Carpenter
Rawlins Field Manager

Date: 9/16/2016